

Introduced by Senator Florez

December 9, 2004

An act to amend Sections 1528, 1530, 1540, 1552, and 13160.1 of, to add Sections 1526 and 1527 to, to add and repeal Article 5 (commencing with Section 1565) of Chapter 8 of Part 2 of Division 2 of, and to repeal and add Section 1525 of, the Water Code, relating to water, and declaring the urgency thereof, to take effect immediately.

LEGISLATIVE COUNSEL'S DIGEST

SB 31, as introduced, Florez. Water fees.

Existing law requires the State Water Resources Control Board, by emergency regulation, to establish fees for making specified water rights filings with the board. The total amount of these fees is required to equal the amount required to recover the board's costs incurred to issue, administer, review monitor, and enforce permits, licenses, certificates, and registrations to appropriate water, water leases, and orders approving changes in point of discharge, place of use, or purpose of use of treated wastewater.

Existing law also requires the board to establish annual fees for holders of permits or licenses to appropriate water and for specified lessors of water.

This bill would substantially revise and recast the provisions for making water rights filings with the board, among other things, to change the listing of applications subject to the board's schedule of fees, to denominate the fees as transactional fees, to limit the fees to processing costs, to require adjustment of individual transactional fees that exceed or are less than average processing cost, to require prescribed fees for parties and entities participating in an evidentiary hearing.

This bill would require the annual permit or license fees to be imposed based upon the number of acre-feet of water covered by the permit or license. The bill would preclude charging duplicate annual permit or license fees to holders of multiple diversion or use licenses or permits, and would require the board to ensure comparable fees per acre foot as to all payors. The bill would place prescribed total annual revenue caps on these fees and would limit the board to expending these fees only for specified activities authorized for expenditure from the Water Rights Fund. The bill would require the board to adopt these fees by emergency regulation.

The bill would require the transactional and annual fees to be imposed upon, or allocated to, lawful users of the water. The bill would preclude imposition of these fees with respect to riparian and pre-1914 water rights. The bill would authorize the board to waive all or a portion of the transactional and annual fees if offsetting appropriations are provided from the General Fund.

The bill would require the state board to convene an advisory group or groups, comprised of specified persons, to assist the evaluation of water rights fee requirements. The bill would require the board to provide public notice on its Web site and, upon request, written notice to interested parties, of meetings of the advisory group or groups and to take other actions to facilitate the participation of the public. The bill would repeal these provisions concerning an advisory group or groups on January 1, 2007.

The bill would require the board by July 1, 2006, to perform a specified audit of the activities of the Division of Water Rights and to file a summary report of the results with the Legislature.

Existing law requires the board to establish a fee schedule for persons filing a proof of claim to surface water rights, so that the fees are sufficient on average to pay the administrative expenses of the board in processing, reviewing, and preparing a report on the claims submitted to the board.

This bill would denominate those application fees as transactional fees and would require those fees to be sufficient on average to pay the actual cost incurred by the board in processing, reviewing, and preparing that report.

Existing law authorizes the board's regulations establishing water rights fees to include provisions for administration and collection. Existing law also requires the schedules of fees to be graduated in

accordance with the number of diversions or amount of water involved.

This bill would delete those provisions.

Existing law specifies that if the United States or an Indian tribe otherwise required to pay a fee or expense imposed by the board will not pay it due to sovereign immunity, the board may allocate the fee or expense to those who have contracts for the delivery of the water.

This bill would instead authorize the board to make allocations of these fees and expenses to persons or entities that directly receive a benefit from, or impose a burden on, the board due to the permit or license held by the sovereign entity. The bill would also authorize these allocations in cases where the sovereign pays a portion of the fee or expense. The bill would require these allocations to be based upon the quantity of water that the payor is entitled to use.

Existing law authorizes money in the Water Rights Fund to be used by the board, upon appropriation, for prescribed purposes.

This bill would preclude use of the fund for investigating or processing administrative complaints involving water rights or for investigations or proceedings commenced by other than the water right holder for the protection of fish, wildlife, water quality, or other natural resources.

Existing law authorizes the board to establish reasonable fees to cover costs incurred by its and by regional water quality control boards in connection with certificates required or authorized by federal law with respect to the effect of any existing or proposed facility, project, or construction work upon the quality of waters in the state. Under existing law these fees may be imposed as a single fee or as periodic or annual charges. Existing law specifies the persons upon whom the fee may be imposed.

This bill would substantially revise and recast these provisions and would, among other things, preclude periodic or annual fees. The bill would require the fees to be based upon the board's estimate of its average annual cost in conducting the actions or proceedings listed in the schedule of fees. The bill would require the fees to be developed assuming allocation to the parties and entities involved in the proceeding. The bill would require the board to impose prescribed additional fees in any proceeding involving an evidentiary hearing. The bill would require refund of the portion of fees that exceed the board's costs and would require the board to maintain records of costs determined as specified. The bill would authorize the board to waive

fees to the extent moneys therefore are made available to the Division of Water Rights from the General Fund. The bill would specify that, if board staff participates in a hearing through introduction of evidence or cross-examination, proportionate costs shall be allocated to the board.

The bill would declare that it would take effect immediately as an urgency statute.

Vote: $\frac{2}{3}$. Appropriation: no. Fiscal committee: yes. State-mandated local program: no.

The people of the State of California do enact as follows:

1 SECTION 1. The Legislature finds and declares all of the
2 following:

3 (a) The activities of the State Water Resources Control Board,
4 Division of Water Rights, generally benefit (1) the people of the
5 State of California, (2) persons or entities seeking to establish
6 new appropriative water rights or to modify existing rights, and
7 (3) persons and entities that hold appropriative water right
8 permits and licenses.

9 (b) Current law disproportionately places the financial burden
10 of the costs associated with the Division of Water Rights'
11 activities on persons and entities that hold appropriative water
12 right permits and licenses, and persons or entities that seek to
13 establish new appropriative water rights or modify existing
14 rights, and fails to acknowledge the broad public benefit
15 provided to the people of the State of California by the activities
16 of the Division of Water Rights.

17 (c) It is the intent of the Legislature that, through this act and
18 the annual budget process, this inequity will be eliminated and
19 that General Fund moneys will be used to fund water rights
20 programs, actions, or proceedings that involve protection of the
21 public interest, natural resources, or the environment, or where
22 public policy otherwise requires, and that other aspects of the
23 administration of water rights be funded through fees imposed,
24 on an equitable basis, upon persons or entities that hold
25 appropriative water right permits or licenses, or who seek to
26 establish new appropriative water rights or to modify existing
27 rights.

28 SEC. 2. Section 1525 of the Water Code is repealed.

1 ~~1525. (a) Each person or entity who holds a permit or license~~
2 ~~to appropriate water, and each lessor of water leased under~~
3 ~~Chapter 1.5 (commencing with Section 1020) of Part 1, shall pay~~
4 ~~an annual fee according to a fee schedule established by the~~
5 ~~board.~~

6 ~~(b) Each person or entity who files any of the following shall~~
7 ~~pay a fee according to a fee schedule established by the board:~~

8 ~~(1) An application for a permit to appropriate water.~~

9 ~~(2) A registration of appropriation for a small domestic use or~~
10 ~~livestock stockpond.~~

11 ~~(3) A petition for an extension of time within which to begin~~
12 ~~construction, to complete construction, or to apply the water to~~
13 ~~full beneficial use under a permit.~~

14 ~~(4) A petition to change the point of diversion, place of use, or~~
15 ~~purpose of use, under a permit or license.~~

16 ~~(5) A petition to change the conditions of a permit or license,~~
17 ~~requested by the permittee or licensee, that is not otherwise~~
18 ~~subject to paragraph (3) or (4).~~

19 ~~(6) A petition to change the point of discharge, place of use, or~~
20 ~~purpose of use, of treated wastewater, requested pursuant to~~
21 ~~Section 1211.~~

22 ~~(7) An application for approval of a water lease agreement.~~

23 ~~(8) A request for release from priority pursuant to Section~~
24 ~~10504.~~

25 ~~(9) An application for an assignment of a state-filed~~
26 ~~application pursuant to Section 10504.~~

27 ~~(c) The board shall set the fee schedule authorized by this~~
28 ~~section so that the total amount of fees collected pursuant to this~~
29 ~~section equals that amount necessary to recover costs incurred in~~
30 ~~connection with the issuance, administration, review, monitoring,~~
31 ~~and enforcement of permits, licenses, certificates, and~~
32 ~~registrations to appropriate water, water leases, and orders~~
33 ~~approving changes in point of discharge, place of use, or purpose~~
34 ~~of use of treated wastewater. The board may include, as~~
35 ~~recoverable costs, but is not limited to including, the costs~~
36 ~~incurred in reviewing applications, registrations, petitions and~~
37 ~~requests, prescribing terms of permits, licenses, registrations, and~~
38 ~~change orders, enforcing and evaluating compliance with~~
39 ~~permits, licenses, certificates, registrations, change orders, and~~
40 ~~water leases, inspection, monitoring, planning, modeling,~~

1 reviewing documents prepared for the purpose of regulating the
2 diversion and use of water, applying and enforcing the
3 prohibition set forth in Section 1052 against the unauthorized
4 diversion or use of water subject to this division, and the
5 administrative costs incurred in connection with carrying out
6 these actions.

7 (d) (1) The board shall adopt the schedule of fees authorized
8 under this section as emergency regulations in accordance with
9 Section 1530.

10 (2) For filings subject to subdivision (b), the schedule may
11 provide for a single filing fee or for an initial filing fee followed
12 by an annual fee, as appropriate to the type of filing involved,
13 and may include supplemental fees for filings that have already
14 been made but have not yet been acted upon by the board at the
15 time the schedule of fees takes effect.

16 (3) The board shall set the amount of total revenue collected
17 each year through the fees authorized by this section at an
18 amount equal to the revenue levels set forth in the annual Budget
19 Act for this activity. The board shall review and revise the fees
20 each fiscal year as necessary to conform with the revenue levels
21 set forth in the annual Budget Act. If the board determines that
22 the revenue collected during the preceding year was greater than,
23 or less than, the revenue levels set forth in the annual Budget
24 Act, the board may further adjust the annual fees to compensate
25 for the over or under collection of revenue.

26 (e) Annual fees imposed pursuant to this section for the
27 2003-04 fiscal year shall be assessed for the entire 2003-04
28 fiscal year.

29 SEC. 3. Section 1525 is added to the Water Code, to read:

30 1525. (a) The board shall adopt a fee schedule that imposes a
31 transactional fee on each person or entity with business before
32 the board, as follows:

33 (1) A transactional fee shall be imposed on each person or
34 entity that files with the board any of the following:

35 (A) An application for a permit to appropriate water under
36 Chapter 2 (commencing with Section 1250).

37 (B) A registration of appropriation for a small domestic use or
38 livestock stockpond under Article 2.7 (commencing with Section
39 1228) of Chapter 1.

1 (C) A petition, under Section 1398, for an extension of time
2 within which to begin construction, to complete construction, or
3 to apply water to full beneficial use under a permit.

4 (D) A petition, under Chapter 10 (commencing with Section
5 1700) or Chapter 10.5 (commencing with Section 1725), to
6 change the point of diversion, place of use, or purpose of use,
7 under a permit or license.

8 (E) A request for a license under Chapter 9 (commencing with
9 Section 1600).

10 (F) A petition to change the point of discharge, place of use, or
11 purpose of use, of treated wastewater, requested pursuant to
12 Section 1211.

13 (G) An application for approval of a water lease agreement
14 under Chapter 1.5 (commencing with Section 1020) of Part 1.

15 (H) A request for release from priority pursuant to Section
16 10504.

17 (I) An application for an assignment of a state-filed
18 application pursuant to Section 10504.

19 (J) An application for a temporary permit under Chapter 6.5
20 (commencing with Section 1425).

21 (K) A water rights complaint.

22 (L) A petition for a temporary urgency change under Chapter
23 6.6 (commencing with Section 1435).

24 (2) A transactional fee shall be imposed on each participant in
25 an evidentiary hearing conducted by the board on any of the
26 filings identified in paragraph (1).

27 (b) The transactional fees for the board's consideration of each
28 filing identified in paragraph (1) of subdivision (a) shall be based
29 on the board's estimate of its average actual cost in processing
30 that type of document through to a final decision by the board.

31 (1) To the extent that the board's actual cost of processing a
32 filing of a type identified in paragraph (1) of subdivision (a)
33 exceeds the board's average actual cost in processing that type of
34 document, the board may collect the excess amount from the
35 person or entity that made the filing with the board.

36 (2) To the extent that the board's actual cost in processing a
37 filing specified in paragraph (1) of subdivision (a) is less than the
38 board's average actual cost in processing that type of document,
39 the board shall refund the excess to the person or entity that made
40 the filing with the board.

(c) The transactional fees for any evidentiary hearing conducted by the board on filing specified in paragraph (1) of subdivision (a) shall be allocated to each party and entity to the hearing who voluntarily become involved therein and shall be based upon the amount of time during the hearing consumed by each respective presentation of each party and entity and cross-examination and the volume of evidence presented by each party and entity. If board staff participates in the hearing through the introduction of evidence or cross-examination, the board shall allocate a commensurate portion of the cost of the hearing to the board. The board shall maintain records of its actual cost incurred in the hearing. The board's hourly cost rate used to determine actual cost of the hearing shall be based upon the board's salaries, benefits, travel expense, operating, equipment, administrative support, and overhead costs specifically attributable to that hearing. In no event shall the board include in the calculation of the actual cost of the hearing any general administrative or overhead costs not directly attributable to that hearing. To the extent that the fees paid to the board in connection with an evidentiary hearing exceed the board's actual cost incurred in conducting the hearing, the board shall refund the excess fees to each party or entity, in proportion to each party's or entity's contribution.

(d) For any person or entity who makes a filing specified in paragraph (1) of subdivision (a) that requires processing of the board for more than one year, the board may assess a transactional fee each year the transaction is pending before the board, but the total amount of transactional fees assessed to that person or entity shall in no event exceed the board's actual costs in processing that filing.

(e) To the extent that the board requires an evidentiary hearing to process a filing of a type specified in paragraph (1) of subdivision (a), the costs of the hearing shall be allocated as provided in subdivision (c), and not under subdivision (b).

(f) This section only applies to board proceedings or hearings on matters involving a filing specified in paragraph (1) of subdivision (a).

(g) The board shall adopt the schedule of fees authorized under this section as emergency regulations in accordance with Section 1530.

1 SEC. 4. Section 1526 is added to the Water Code, to read:

2 1526. (a) The board shall adopt a fee schedule that imposes an
3 annual fee on each person or entity that holds a permit or license
4 to appropriate water, or leases under Chapter 1.5 (commencing
5 with Section 1020) of Part 1.

6 (b) The annual fee for each permit or license shall be a charge
7 per acre-foot of water that the permit or license holder may use
8 during the applicable year for consumptive or nonconsumptive
9 uses under the permit or license.

10 (c) The board shall ensure that (1) there is no duplication of
11 annual fees imposed upon a permit holder or licensee who holds
12 multiple permits or licenses authorizing diversion or use of the
13 same water and (2) the fees, as among all water users against
14 whom fees are assessed, are comparable per acre-foot of
15 authorized diversion.

16 (d) The total revenue generated from annual fees under this
17 section shall not exceed the following:

18 (1) For the 2005-06 fiscal year, the lesser of 50 percent of the
19 revenue levels set forth in the annual Budget Act or three million
20 five hundred thousand dollars (\$3,500,000).

21 (2) For the 2006-07 fiscal year, the lesser of 20 percent of the
22 revenue levels set forth in the annual Budget Act or one million
23 four hundred thousand dollars (\$1,400,000).

24 (3) For each fiscal year thereafter, the lesser of 5 percent of the
25 revenue levels set forth in the annual Budget Act or three
26 hundred fifty thousand dollars (\$350,000).

27 (e) The board shall expend the annual fees collected under this
28 section only to fund the activities for which expenditures from
29 the Water Rights Fund are authorized in Section 1552.

30 (f) The board shall adopt the schedule of fees authorized under
31 this section as emergency regulations in accordance with Section
32 1530.

33 SEC. 5. Section 1527 is added to the Water Code, to read:

34 1527. (a) Transactional and annual fees may only be imposed
35 on or allocated to persons or entities that are lawful users of the
36 water involved.

37 (b) Transactional and annual fees shall not be imposed on or
38 allocated to any person or entity based on a permit or license that
39 authorizes the appropriation of water for which that person or

1 entity holds a riparian and pre-1914 water right for the same
2 water.

3 (c) The board may waive, in whole or in part, any
4 transactional or annual fee required under Section 1525 or 1526
5 if the revenue otherwise generated from the fee is made available
6 to the Division of Water Rights through appropriations from the
7 General Fund.

8 SEC. 6. Section 1528 of the Water Code is amended to read:

9 1528. Each person or entity who files a proof of claim under
10 Article 4 (commencing with Section 2575) of Chapter 3 of Part 3
11 shall pay a *transactional* fee according to a fee schedule
12 established by the board. The board shall adopt the schedule of
13 fees pursuant to Section 1530. The board shall establish the
14 *transactional* fees so as to be sufficient on the average to pay the
15 ~~administrative expenses of~~ *actual* cost incurred by the board in
16 processing, reviewing, and preparing a report on the claims
17 submitted to the board.

18 SEC. 7. Section 1530 of the Water Code is amended to read:

19 1530. (a) The board shall adopt, by emergency regulation, the
20 schedules of fees authorized under this article. ~~The emergency~~
21 ~~regulation may include provisions concerning the administration~~
22 ~~and collection of the fees. The fee schedules may be graduated in~~
23 ~~accordance with the number of diversions or the amount of water~~
24 ~~involved.~~ The board shall periodically adjust the amount of the
25 fees specified in the schedule in accordance with this article.

26 (b) The emergency regulations adopted pursuant to this
27 section, any amendment thereto, or subsequent adjustments to the
28 regulations, shall be adopted by the board in accordance with
29 Chapter 3.5 (commencing with Section 11340) of Part 1 of
30 Division 3 of Title 2 of the Government Code. The adoption of
31 these regulations is an emergency and shall be considered by the
32 Office of Administrative Law as necessary for the immediate
33 preservation of the public peace, health, safety, and general
34 welfare. Notwithstanding Chapter 3.5 (commencing with Section
35 11340) of Part 1 of Division 3 of Title 2 of the Government
36 Code, any emergency regulations adopted by the board, or any
37 adjustment to ~~an annual~~ a fee made by the board pursuant to this
38 section, shall remain in effect until revised by the board.

39 SEC. 8. Section 1540 of the Water Code is amended to read:

1540. (a) If the board determines that the person or entity on whom a fee or expense is imposed will not pay the fee or expense, *either in whole or in part*, based on the fact that the fee payer has sovereign immunity under Section 1560, the board may allocate ~~the fee or expense, or an appropriate portion of the unpaid fee or expense, to persons or entities who have contracts for the delivery of water from the person or entity on whom the fee or expense was initially imposed. The allocation of the fee or expense to these contractors does not affect ownership of any permit, license, or other water right, and does not vest any equitable title in the contractors~~ *directly receive a benefit from, or cause a burden on, the board due to the permit or license held by the sovereign entity.*

(b) *If the board exercises its authority under subdivision (a), the annual fee charged to a person or entity that benefits from, or causes a burden on, the board due to a permit or license held by the sovereign shall be limited to a fee based on the quantity of water which the person or entity is entitled to use.*

SEC. 9. Section 1552 of the Water Code is amended to read:

1552. *The money in the Water Rights Fund may not be expended for any purpose other than as set forth in this section.* The money in the Water Rights Fund is available for expenditure, upon appropriation by the Legislature, for the following purposes:

(a) For expenditure by the State Board of Equalization in the administration of this chapter and the Fee Collection Procedures Law (Part 30 (commencing with Section 55001) of Division 2 of the Revenue and Taxation Code) in connection with any fee or expense subject to this chapter.

(b) For the payment of refunds, pursuant to Part 30 (commencing with Section 55001) of Division 2 of the Revenue and Taxation Code, of fees or expenses collected pursuant to this chapter.

(c) For expenditure by the board for the purposes of carrying out this division, Division 1 (commencing with Section 100), Part 2 (commencing with Section 10500) of Division 6, and Article 7 (commencing with Section 13550) of Chapter 7 of Division 7, *except that the board shall not expend money from the Water Rights Fund for any of the following purposes:*

1 *(1) Investigating or processing of administrative complaints*
2 *involving water rights.*

3 *(2) Investigations or proceedings commenced by a person or*
4 *persons, other than the water right holder, for the protection of*
5 *fish, wildlife, water quality, or other natural resources,*
6 *including, but not limited to, investigations or proceedings based*
7 *on Section 275, Section 2 of Article X of the California*
8 *Constitution, the Fish and Game Code, the federal Endangered*
9 *Species Act (16 U.S.C. Sec. 1531 et seq.), or the common law*
10 *public trust doctrine.*

11 (d) For expenditures by the board for the purposes of carrying
12 out Section 13160 and 13160.1 in connection with activities
13 involving hydroelectric power projects subject to licensing by the
14 Federal Energy Regulatory Commission.

15 (e) For expenditures by the board for the purposes of carrying
16 out Section 13140 and 13170 in connection with plans and
17 policies that address the diversion or use of water.

18 SEC. 10. Article 5 (commencing with Section 1565) is added
19 to Chapter 8 of Part 2 of Division 2 of the Water Code, to read:

20
21 Article 5. Evaluation of Water Right Fees
22

23 1565. (a) On or before February 15, 2006, the state board
24 shall convene an advisory group or groups to assist in the
25 evaluation of the water right fee requirements set forth in this
26 chapter and to review existing and proposed regulations and fee
27 schedules to ensure an equitable distribution of fees and costs
28 among water rights holders and the public at large.

29 (b) The advisory group or groups shall be comprised of
30 persons concerned with the water right fees and fee schedules
31 established pursuant to this chapter.

32 (c) The state board shall provide public notice on its Web site
33 with regard to any meetings of the advisory group or groups and,
34 upon request, shall provide written notice of the time and
35 location of any meeting of the group or groups to any interested
36 party. The state board shall ensure that the advisory group or
37 groups meet in a manner that facilitates the effective participation
38 of the public and interested parties.

39 1566. This article shall remain in effect only until January 1,
40 2007, and as of that date is repealed, unless a later enacted

statute, that is enacted before January 1, 2007, deletes or extends that date.

SEC. 11. Section 13160.1 of the Water Code is amended to read:

13160.1. (a) The state board may establish a reasonable fee schedule to cover the costs incurred by the state board and the regional boards in connection with any certificate that is required or authorized by any federal law with respect to the effect of any existing or proposed facility, project, or construction work upon the quality of waters of the state, including certificates requested by applicants for a federal permit or license pursuant to Section 401 of the Federal Water Pollution Control Act, as amended, and certificates requested pursuant to Section 169 of the Internal Revenue Code, as amended, with respect to water pollution control facilities.

(b) In providing for the recovery of costs incurred by the state board and regional board pursuant to this section, the state board may include in the fee schedule, but is not limited to including, the costs incurred in reviewing applications for certificates, prescribing terms of certificates and monitoring requirements, enforcing and evaluating compliance with certificates and monitoring requirements, conducting monitoring and modeling, analyzing laboratory samples, reviewing documents prepared for the purpose of regulating activities subject to certificates, and administrative costs incurred in connection with carrying out these actions. The costs of reviewing applications for certificates include, but are not limited to, the costs incurred in anticipation of the filing of an application for a certificate, including participation in any prefiling consultation, and investigation or studies to evaluate the impacts of the proposed activity.

(c) ~~(1) The fee schedule may provide for payment of a single fee in connection with the filing of an application, or for periodic or annual fees, as appropriate to the type of certificate issued and the activity authorized by the certificate. The fee schedule shall not provide for the payment of periodic or annual fees. The fee schedule shall be based on the board's estimate of its average actual cost in conducting the actions or proceedings listed in the schedule. The fee schedule shall be developed assuming and including fees to be allocated to each party and entity involved in the proceeding. In the event that an evidentiary hearing is~~

1 required in connection with any application for a certificate or
2 statement to which Section 13160 applies, the board shall impose
3 additional fees, allocated among all parties and entities to the
4 hearing, in an amount adequate to cover the board's actual costs
5 in conducting the hearing. The board shall allocate fees on a
6 proportionate basis to each participating party and entity
7 associated with an evidentiary hearing based on the amount of
8 time during the hearing consumed by that party's or entity's
9 presentations and cross-examinations and the volume of evidence
10 presented by the party or entity. If board staff participates in the
11 hearing through the introduction of evidence or
12 cross-examination, the board shall allocate a commensurate
13 portion of the cost of the hearing to the board. To the extent that
14 the fees paid to the board in connection with an evidentiary
15 hearing exceed the board's actual cost incurred in conducting
16 the hearing, the board shall refund the excess fees to each party
17 or entity, in proportion to each party's or entity's contribution.
18 The board shall maintain records of its actual cost incurred in
19 the hearing under subdivision (b). The board's hourly cost rate
20 used to determine actual cost of the hearing shall be based upon
21 the board's salaries, benefits, travel expense, operating,
22 equipment, administrative support, and overhead costs
23 specifically attributable to that hearing. In no event shall the
24 board include in the calculation of the actual cost of the hearing
25 general administrative or overhead costs not directly attributable
26 to that hearing. The board may waive in whole or in part any fee
27 required under this section if the revenue otherwise generated
28 from the fee is made available to the Division of Water Rights
29 through appropriations from the General Fund.

30 ~~(2) The fee schedule authorized by this section may impose a~~
31 ~~fee upon any of the following:~~

32 ~~(A) Any person who files an application for a certificate.~~

33 ~~(B) Any person who files with the state board or a regional~~
34 ~~board a notice of intent to file an application for a certificate, or~~
35 ~~who files with a federal agency a notice of intent to apply for a~~
36 ~~federal permit or license for which a certificate will be required~~
37 ~~under Section 401 of the Federal Water Pollution Control Act.~~

38 ~~(C) Any person holding a federal permit or license for which a~~
39 ~~certificate has been issued.~~

~~(D) Any person required to send a notice of intent to the state board or a regional board to proceed with an activity permitted by a general permit subject to certification under Section 13160.~~

(d) (1) If the state board establishes a fee schedule pursuant to this section, the state board shall adopt the fee schedule by emergency regulation. The state board shall set the amount of total revenues collected each year through the fee authorized by this section at an amount equal to the revenue levels set forth in the annual Budget Act for this activity. The state board shall review and revise the fee each fiscal year as necessary to conform with the revenue levels set forth in the annual Budget Act. If the state board determines that the revenue collected during the preceding year was greater than, or less than, the revenue levels set forth in the annual Budget Act, the state board may further adjust the annual fees to compensate for the over or under collection of revenue.

(2) The emergency regulations adopted pursuant to this subdivision, any amendment thereto, or subsequent adjustments to the annual fees, shall be adopted by the state board in accordance with Chapter 3.5 (commencing with Section 11340) of Part 1 of Division 3 of Title 2 of the Government Code. The adoption of these regulations is an emergency and shall be considered by the Office of Administrative Law as necessary for the immediate preservation of the public peace, health, safety, and general welfare. Notwithstanding Chapter 3.5 (commencing with Section 11340) of Part 1 of Division 3 of Title 2 of the Government Code, any emergency regulations adopted by the state board, or adjustments to the annual fees made by the state board pursuant to this section, shall remain in effect until revised by the state board.

(e) Any fees collected pursuant to this section in connection with certificates for activities involving hydroelectric power projects subject to licensing by the Federal Energy Regulatory Commission shall be deposited in the Water Rights Fund.

SEC. 12. Section 1570 is added to the Water Code, to read:

1570. (a) On or before July 1, 2006, the State Water Resources Control Board shall audit the activities of the Division of Water Rights for the period commencing July 1, 2004, to and including June 30, 2006, and shall file with the Legislature a

1 report summarizing the results of the audit. The report shall
2 include, at a minimum all of the following:

3 (1) A description of the Division of Water Rights' significant
4 programs or actions undertaken by that division to implement its
5 programs during each fiscal year under review.

6 (2) A description of the means by which the Division of Water
7 Rights will operate as of July 1, 2007, which is the date on which
8 annual fees under Section 1526 are required to generate revenue
9 that is the lesser of 5 percent of the revenue levels set forth in the
10 annual Budget Act or three hundred fifty thousand dollars
11 (\$350,000).

12 (3) The number of new applications for permits to appropriate
13 water filed, approved, denied, or pending respectively with the
14 board during each fiscal year under review.

15 (4) The numbers of petitions under Section 1398 of the Water
16 Code for extensions of time filed, approved, denied, or pending
17 with the board respectively during each fiscal year under review.

18 (5) The number of petitions for a change or changes in a
19 permit or license to appropriate water, excluding petitions under
20 Section 1398 of the Water Code for extensions of time, filed,
21 approved, denied, or pending with the board respectively during
22 each fiscal year under review.

23 (6) The numbers of requests for licenses filed, issued, or
24 pending with the board respectively during each fiscal year under
25 review.

26 (7) The number of petitions under Section 1211 of the Water
27 Code filed, approved, denied, or pending with the board
28 respectively during each fiscal year under review.

29 (8) The number of licensing proceedings by the Federal
30 Energy Regulatory Commission in which the board participated
31 during each fiscal year under review.

32 (9) The number and amount of staff hours expended by the
33 board on each administrative hearing conducted by the board's
34 Division of Water Rights during each fiscal year under review.

35 (b) If the board fails to file a report required by subdivision
36 (a), paragraph (3) of subdivision (d) of 1526 of the Water Code
37 shall be applicable as of July 1, 2006.

38 SEC. 13. This act is an urgency statute necessary for the
39 immediate preservation of the public peace, health, or safety

1 within the meaning of Article IV of the Constitution and shall go
2 into immediate effect. The facts constituting the necessity are:
3 In order to carry out critical water rights programs and policies
4 administered by the state without delay, it is necessary that this
5 act take effect immediately.

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